American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Good Life Acupuncture, P.C. (Applicant)	AAA Case No.	17-19-1137-4564
	Applicant's File No.	145559
- and -	Insurer's Claim File No.	0339625440101034
	NAIC No.	22055
Geico Insurance Company (Respondent)		

ARBITRATION AWARD

I, Aaron Maslow, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD:**

Injured Person(s) hereinafter referred to as: Assignor ["ES"]

1. Hearing(s) held on 02/09/2021
   Declared closed by the arbitrator on 02/09/2021

   The Law Offices of John Gallagher, PLLC from The Law Offices of John Gallagher, PLLC participated by written submission for the Applicant

   GEICO Insurance Company from GEICO Insurance Company participated by written submission for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,889.89**, was NOT AMENDED at the oral hearing.
   Stipulations WERE NOT made by the parties regarding the issues to be determined.

3. Summary of Issues in Dispute

   - Whether Applicant established entitlement to additional No-Fault insurance compensation for acupuncture services provided to Assignor.
   - Whether to sustain Respondent's payment for acupuncture at the chiropractor rate.
   - Whether to sustain Respondent's payment for the cupping billed under CPT Code 97799, a by report code, at $13.87.

- Whether Applicant established entitlement to additional No-Fault compensation for an initial office visit, denied by Respondent on the grounds that the procedure is considered part of a more comprehensive service and that there is no allowance for the procedure in the Workers' Compensation Fee Schedule under the provider's specialty; and, if so, at what rate.

- Whether to sustain Respondent's payment for a follow-up office visit billed under CPT Code 99212, at the chiropractor rate of $26.42.

- Whether Respondent made out a prima facie case of lack of medical necessity for treatment past an IME cutoff and, if so, whether Applicant rebutted it.

4. Findings, Conclusions, and Basis Therefor

Appearances

For Applicant:

The Law Offices of John Gallagher, PLLC
1510 Elm Avenue
3rd Floor
Brooklyn, NY 11230

For Respondent:

GEICO Insurance Company
750 Woodbury Road
Woodbury, NY 11797

Applicant, a professional business entity owned by a licensed acupuncturist, commenced this New York No-Fault insurance arbitration, seeking as compensation $1,889.89 remaining unpaid from that which it billed for performing acupuncture services (including office visits and cupping) from March 4, 2019 to June 12, 2019, for Assignor, a 36-year-old female who was injured in a motor vehicle accident on March 3, 2019. Five bills were listed in Applicant's arbitration request form:

March 4, 2019-March 20, 2019: $966.67 billed, $406.26 paid, $560.41 sought

March 25, 2019-April 9, 2019: $792.75 billed, $260.55 paid, $532.20 sought

April 12, 2019-April 18, 2019: $482.02 billed, $165.48 paid, $316.54 sought

May 1, 2019-May 14, 2019: $413.20 billed, $139.06 paid, $274.14 sought

June 12, 2019: $206.60 billed, $0 paid, $206.60 sought

Acupuncture and office visits were billed at the doctor rate. Acupuncture was reimbursed at the chiropractor rate. Respondent denied payment for the initial office visit and paid for a follow-up one at the chiropractor rate. Cupping, billed under by report Code 97799, at $80.00 or $100.00 per line entry was paid at $13.87 per line entry. Respondent's denials asserted that fees were not in accordance with fee schedule. The last bill was also denied on the ground of lack of medical necessity based on an IME cutoff of acupuncture services effective May 30, 2019.

This arbitration was organized by the American Arbitration Association, which has been designated by the New York State Department of Financial Services to coordinate the mandatory arbitration provisions of Insurance Law § 5106(b), which provides:

> Every insurer shall provide a claimant with the option of submitting any dispute involving the insurer's liability to pay first party ["No-Fault insurance"] benefits, or additional first party benefits, the amount thereof or any other matter which may arise pursuant to subsection (a) of this section to arbitration pursuant to simplified procedures to be promulgated or approved by the superintendent.

This arbitration was scheduled for a hearing to take place on Feb. 9, 2021. Rule a of the Rules for Arbitration of No-Fault Disputes in the State of New York, promulgated by the American Arbitration Association (AAA), and 11 NYCRR 65-4.5(a) in the New York No-Fault Regulations both provide: "At the arbitrator's discretion, if the dispute involves an amount less than $2,000, the parties shall be notified that the dispute shall be resolved on the basis of written submissions of the parties." On Jan. 4, 2021, the undersigned arbitrator entered a determination in this case's Electronic Case Folder that the instant dispute would be resolved on the basis of the written submissions of the parties. This was subsequently conveyed to the parties by AAA, who informed them that no live hearing would be conducted.

I have reviewed the submissions' documents contained in the American Arbitration Association's ADR Center as of Feb. 5, 2021, said submissions constituting the record in this case. This date was set as the cutoff date for any late submissions in the Jan. 5, 2021 determination. Any late submissions on or prior to Feb. 5, 2021 have been considered. Any submitted afterwards have not. This is pursuant to 11 NYCRR 65-4.2(b)(3)(iv), which vests discretion in the arbitrator to determine whether documents which otherwise would be excluded from the record due to lateness by virtue of 11 NYCRR 65-4.2(b)(3)(i)-(iii) should be considered.

"[A] plaintiff demonstrates prima facie entitlement to summary judgment by submitting evidence that payment of no-fault benefits are overdue, and proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer." Viviane Etienne Medical Care, P.C. v. Country-Wide Ins. Co., 25 N.Y.3d 498, 501 (2015). "The court may, in its discretion, rely on defendant's documentary submissions establishing defendant's receipt of plaintiff's claims [citation omitted]." Lenox Hill Radiology MIA, P.C. v. American Transit Ins. Co., 19 Misc.3d 358, 363

(Civ. Ct. New York Co. 2008). An insurer's denial of claim form indicating the date on which it was received adequately establishes that the claimant sent, and that the defendant received, the claim. Ultra Diagnostics Imaging v. Liberty Mutual Ins. Co., 9 Misc.3d 97 (App. Term 9th & 10th Dists. 2005). Respondent's NF-10 denial of claim forms acknowledged receipt of Applicant's proofs of claim and proved partial payment or nonpayment of the bills embodied therein. Hence, I find that Applicant established a prima facie case of entitlement to No-Fault compensation.

Respondent's denials were timely issued, i.e., within the 30-day deadline prescribed by Insurance Law §5106(a) and 11 NYCRR 65-3.8(a)(1). As such, all defenses in the denials may be considered. In any event, fee issues may be considered regardless of whether a denial of claim is timely issued. E.g., Jing Luo Acupuncture, P.C. v. NY City Transit Authority, 60 Misc.3d 136(A), 2018 N.Y. Slip Op. 51083(U) (App. Term 2d, 11th & 13th Dists. July 6, 2018); Surgicare Surgical Associates v. National Interstate Ins. Co., 50 Misc.3d 85 (App. Term 1st Dept. 2015), aff'g, 46 Misc.3d 736 (Civ. Ct. Bronx Co. 2014) (New Jersey); USAA General Indemnity Co. v. New York Chiropractic & Physical Therapy, PLLC, 60 Misc.3d 254 (Civ. Ct. Richmond Co., Lisa Grey, J., May 1, 2018).

"While courts have held that 'an insurer *may* use the workers' compensation fee schedule for acupuncture services performed by chiropractors to determine the amount which a licensed acupuncturist is entitled to receive' (*Great Wall Acupuncture, P.C. v Geico Ins. Co.*, 26 Misc 3d 23, 24 [App Term 2d Dept 2009] [emphasis added]; *see also Akita Med. Acupuncture, P.C. v Clarendon Ins. Co.*, 41 Misc 3d 134[A], 2013 NY Slip Op 51860[U] [App Term 1st Dept 2013]), such holdings do not foreclose the use of the physician fee schedule in all cases (*see e.g. Okslen Acupuncture P.C. v Travco Ins. Co.*, 44 Misc 3d 135[A], 2014 NY Slip Op 51209[U], at *1 [App Term 1st Dept 2014]; *Raz Acupuncture, P.C. v AIG Indem. Ins. Co.*, 28 Misc3d 127[A], 2010 NY Slip Op 51177[U], at *2 [App Term 2d Dept 2010])." Global Liberty Ins. Co. v. Acupuncture Now, P.C., 178 A.D.3d 512 (1st Dept. 2019). This decision reflected a denial of the plaintiff insurer's motion for summary judgment on the ground that there was conflicting evidence as to the appropriate rate for acupuncture performed by acupuncturists. In the case at bar, the parties did not submit evidence on the issue. Therefore, I apply Great Wall Acupuncture, P.C. v. GEICO Ins. Co., 26 Misc.3d 23, 24-25 (App. Term 2d, 11th & 13th Dists. 2009), wherein the court stated:

> A person who seeks to practice acupuncture must be either licensed (Education Law § 8214) or certified (Education Law § 8216) to do so (*see* Education Law § 8212). The training to obtain a license remains the same even if the person seeking to practice acupuncture has a license in a different profession, such as a chiropractic license (*see* 8 NYCRR 52.16 [b]; *cf.* 8 NYCRR 52.16 [a]). Indeed, at trial, plaintiff's witness, who was both a licensed acupuncturist and a licensed chiropractor, so testified. Accordingly, in light of the licensure requirements, we hold, as a matter of law, that an insurer may use the workers' compensation fee schedule for acupuncture services performed by chiropractors to determine the amount which a licensed

> acupuncturist is entitled to receive for such acupuncture services (*see Great Wall Acupuncture v GEICO Gen. Ins. Co.*, 16 Misc 3d 23 [App Term, 2d & 11th Jud Dists 2007]; *see also AVA Acupuncture, P.C. v GEICO Gen. Ins. Co.*, 23 Misc 3d 140[A], 2009 NY Slip Op 51017[U] [App Term, 2d, 11th & 13th Jud Dists 2009]; *AVA Acupuncture, P.C. v GEICO Gen. Ins. Co.*, 17 Misc 3d 41 [App Term, 2d & 11th Jud Dists 2007]; 2004 Ops Gen Counsel NY Ins Dept No. 04-10-03 [Oct 2004] [*http://www.ins.state.ny.us/ogco 2004/rg041003.htm*]). Consequently, since it is undisputed that the instant defendant reimbursed plaintiff pursuant to the workers' compensation fee schedule for acupuncture services rendered by a chiropractor, plaintiff is not entitled to any additional reimbursement.

Numerous other decisions have supported paying for acupuncture by acupuncture business entities at the chiropractor rate. E.g., GBI Acupuncture, P.C. v. State Farm Mutual Automobile Ins. Co., 58 Misc.3d 137(A), 2017 N.Y. Slip Op. 51832(U) (App. Term 2d, 11th & 13th Dists. Dec. 19, 2017); Charles Deng Acupuncture, P.C. v. ELRAC, Inc., 57 Misc.3d 127(A), 2017 N.Y. Slip Op. 51149(U) (App. Term 2d, 11th & 13th Dists. Sept. 8, 2017); Akita Medical Acupuncture, P.C. v. Clarendon Ins. Co., 41 Misc.3d 134(A), 2013 N.Y. Slip Op. 51860(U), (App. Term 1st Dept. Nov. 14, 2013); Allstate Ins. Co. v. Natural Healing Acupuncture, P.C., 39 Misc.3d 1217(A), 975 N.Y.S.2d 364 (Table), 2013 N.Y. Slip Op. 50645(U), 2013 WL 1775500 (Civ. Ct. Kings Co., Katherine A. Levine, J., Apr. 3, 2013). The partial payment by a No-Fault insurer at the chiropractor rate for a billed acupuncture office visit was sustained in Charles Deng Acupuncture, P.C. v. State Farm Mutual Automobile Ins. Co., 57 Misc.3d 146(A), 2017 N.Y. Slip Op. 51460(U) (App. Term 2d, 11th & 13th Dists. Oct. 27, 2017).

Applicant billed for acupuncture at the Region IV doctor rate prescribed by the New York Workers' Compensation Medical Fee Schedule: Code 97810, $30.00; Code 97811, $25.69. Respondent paid for acupuncture at the rate for such services when performed by a chiropractor, as per the Workers' Compensation Chiropractic Fee Schedule; Code 97810, $20.52; Code 97811, $17.57. I sustain such payments, relying upon the cited case law. Applicant did not submit evidence to support its billing at the doctor rate.

Applicant performed a Code 99203 initial office visit on March 4, 2019, and billed $104.08, the doctor rate. The proper rate for such office visit would be $54.74, the chiropractor rate. Respondent denied payment. Respondent asserted in its denial that "There is no allowance for this procedure in the New York State Worker's Compensation Fee Schedule under the provider's specialty." Actually, there is no Workers' Compensation fee schedule governing licensed acupuncturists or their business entities. Applicant is a professional business entity owned by a licensed acupuncturist. The lack of a fee schedule specific to acupuncturists and their professional business entities is what triggered extensive litigation concerning fees for their services, resulting in decisions such as those cited above. Since the courts have sustained paying for acupuncture and office visits at the chiropractor rate, I

reject the defense that there is no allowance for the office visit in the Workers' Compensation Fee Schedule under the provider's specialty.

Respondent also asserted in its denial that the procedure is considered part of a more comprehensive service. In Mind & Body Acupuncture, P.C. v. Elrac, Inc., 48 Misc.3d 139(A), 2015 N.Y. Slip Op. 51219(U) (App. Term 2d, 11th & 13th Dists. Aug. 5, 2015), it was held that if the fees for acupuncture treatment exceed the fee for an initial evaluation which was also billed, the acupuncture provider is not entitled to be paid for an office visit on that date. Applicant was paid $20.52 for the March 4, 2019 services in the respective bill, which is less than the $54.74 chiropractor rate for a Code 99203 office visit. Therefore, I reject the defense that the office visit is considered part of a more comprehensive service. I award $34.22, reflecting the difference between the chiropractor rate and what Respondent paid.

Applicant billed at the $68.82 doctor rate for an April 18, 2019 Code 99212 follow-up office visit. Respondent paid the $26.42 chiropractor rate. Based on the analysis above concerning the proper rate of compensation for acupuncturists, I sustain Respondent's payment.

Applicant billed $80.00 or $100.00 under Code 97799 per line entry for the cupping, and Respondent in turn paid $13.87 per line entry. Code 97799 is a by report code. The CPT coding system was developed by the American Medical Association. Within it are by report codes. These codes lack specified values. The amount charged must be justified in a report detailing the nature of the services, the experience of the person performing them, and why the services were performed, among other things. Also the service must be assigned a number of relative value units (RVUs) relative to other services which have been assigned designated RVUs.

In support of its payment of $13.87 for each line entry of cupping under Code 97799, Respondent submitted an affidavit from Steven Schram, L.Ac., dated July 11, 2016. He described his credentials, which are quite impressive: "I am a duly licensed Acupuncturist in the State of New York. I have been practicing acupuncture in private practice in New York City for over 20 years. I obtained my Acupuncture degree from the Pacific College of Oriental Medicine in 1996, and earned a Diplomate certification from the National Certification Commission for Acupuncture and Oriental Medicine that same year. I have served as President and Board Member of the Acupuncture Society of New York (ASNY), authored articles on Acupuncture, and regularly completed continuing education courses m Acupuncture. I currently serve as Chair of the NY State Acupuncture Board." Also: "I have also earned multiple degrees in Chemistry (Gettysburg College B.A., University of Maryland Ph.D.) and Herbology (Pacific College of Oriental Medicine) and have been an invited speaker at numerous conferences and association events." I also note from Dr. Schram's CV the following: He is both a chiropractor and an acupuncturist, he is still a member of the NYS Acupuncture Board, and he authored books and articles.

With respect to cupping, Dr. Schram wrote in his affidavit: "Some practitioners use code 97799 (unlisted physical medicine/rehabilitation service or

procedure), but that code is not entirely accurate because these procedures are not rehabilitative in nature. Nevertheless, both code 97039 and 97799 are 'by report' codes, which do not have a relative values listed in the June 1, 2012 New York Workers Compensation Medical Fee Schedule and/or Chiropractic Fee Schedule (collectively, the 'Fee Schedule'). When billing for a 'by report' item, the billing provider should generally submit pertinent information concerning the nature, extent and need for the procedure as well as the time, skill and equipment necessarily involved in same. In addition, the Fee Schedule general ground rules state that the provider 'shall establish a relative value unit consistent in relativity with other value units shown in the schedule'. See Ground Rule 3 (Medical Fee Schedule) and Ground Rule 2 (Chiropractic Fee Schedule)."

Dr. Schram assigned 2.40 relative value units to cupping: "[I]t is my professional opinion that the Work RVU unit for cupping is 2.40, which is between an unattended hot pack (2.37) and attended ultra-sound (2.41). There is little overhead associated with cupping as it requires very little in the way of supplies other than, potentially, a lubricant on the skin surface to maintain a tight seal." When 2.40 is multiplied by the Region IV chiropractor conversion factor of $5.78, the resulting product is $13.87. That is what Respondent paid for the cupping.

Applicant submitted an exam report and treatment notes which covered the cupping. It did not particularize the skill of the person performing the cupping. It did not analogize the cupping to other services, as Dr. Schram did. I find Dr. Schram's analysis more persuasive and credible. Also, I find his credentials to be extensive. I sustain Respondent's paying $13.87 per line for cupping.

In Bronx Acupuncture Therapy, P.C. v. Hereford Ins. Co., 175 A.D.3d 455 (2d Dept. 2019), it was held that a denial of claim concerning a by report service which is predicated upon a defense that the provider failed to provide pertinent information concerning the nature, extent, and need for the service, or the time, the skill and the equipment necessary -- matters required to be set forth in the requisite report - is without merit as a matter of law since the insurer could have sought the information in a verification request; in essence, such a denial is based on the lack of sufficient information. In the case at bar, however, Respondent did not deny payment on the basis of by report information not being provided. A report and treatment notes were sent by Applicant along with the claim forms and Respondent did make partial payment instead of completely denying the bill. An insurer need not adhere to a health service provider's report concerning the amount charged but may consider it and determine that the service is compensable at a reduced amount. See 11 NYCRR 68.5(a). Hence Bronx Acupuncture Therapy, P.C. is not applicable although a by report code was billed.

Respondent's fee defenses, including fees not being in accordance with fee schedule, overcome Applicant's prima facie case of entitlement to No-Fault compensation except with respect to the March 4, 2019 office visit, for which an additional $34.22 is awarded.

There remains an IME cutoff imposed by Respondent following the May 15, 2019 IME conducted by Jeffrey Nudelman, L.Ac. The cutoff of benefits for further acupuncture on the ground of lack of medical necessity was imposed effective May 30, 2019.

At the outset of Mr. Nudelman's IME report, he noted that Assignor was a seat-belted driver of a car involved in a motor vehicle accident on March 3, 2019. She sustained injuries to her neck, mid back, lower back, and left shoulder. Starting the day after the accident, Assignor began treatment in the nature of chiropractic, physical therapy, and acupuncture. "At the time of this evaluation, the claimant is continuing to complain of pain in the neck that goes to the extremities and low back that goes to the extremities and pain in the left shoulder."

Mr. Nudelman conducted a Traditional Chinese Medicine (TCM) examination. Vitality was normal. There was normal complexion of the facial/skin color. The tongue was pink. Palpation and pulse were normal. Voice was clear and directed. Respiration was clear and regular. Pulse diagnosis had resolved.

Mr. Nudelman also conducted a Western medicine style examination. Range of motion in the cervical and lumbosacral spine areas was complete, the normal degrees and the achieved degrees being set forth. There was no tenderness or spasm. Sensation and muscle strength were normal. In the left shoulder, range of motion was also complete, and there was no tenderness or crepitus.

Besides the Western medicine diagnoses of resolved cervical, thoracic, and lumbar spine strains and resolved left shoulder sprain, Mr. Nudelman offered his TCM diagnosis: "Qi and blood stagnation in UB and DU channels of the cervical spine, thoracic spine and lumbar spine have been resolved. Stagnation Qi and blood in LI channels of the left shoulder have been resolved." He added: "The claimant does not exhibit any signs or symptoms of Qi and blood flow stagnation in the blood channels. Based on my examination, review of medical records and the history provided by the claimant, there is no need for further acupuncture treatment for the neck, mid and low back, and left shoulder from an acupuncturist point of view. It is my opinion that there is no necessity for diagnostic testing, special transportation, durable medical supplies or household help. An end result with acupuncture treatment has been reached."

An IME doctor must establish a factual basis and medical rationale for his asserted lack of medical necessity of further health care services. E.g., Ying Eastern Acupuncture, P.C. v. Global Liberty Insurance, 20 Misc.3d 144(A), 2008 N.Y. Slip Op. 51863(U) (App. Term 2d & 11th Dists. Sept. 3, 2008). If he does so, it becomes incumbent on the claimant to rebut the IME review, see AJS Chiropractic, P.C. v. Mercury Ins. Co., 2009 WL 323421 (App. Term 2d & 11th Dist. Feb. 9, 2002), because the ultimate burden of proof on the issue of medical necessity lies with the claimant. See Insurance Law § 5102; Wagner v. Baird, 208 A.D.2d 1087 (3d Dept. 1994); Shtarkman v. Allstate Insurance Co., 2002 WL 32001277 (App. Term 9th & 10th Jud. Dists. 2002) (burden of establishing whether a medical test performed by a

medical provider was medically necessary is on the latter, not the insurance company). The insured or the provider bears the burden of persuasion on the question of medical necessity. Bedford Park Medical Practice P.C. v. American Transit Ins. Co., 8 Misc.3d 1025(A), 2005 N.Y. Slip Op. 51282(U) at 3 (Civ. Ct. Kings Co., Jack M. Battaglia, J., Aug. 12, 2005). This burden of proof is properly placed on a claimant health care provider because presumably it is in possession of the injured party's medical records.

"Where the defendant insurer presents sufficient evidence to establish a defense based on the lack of medical necessity, the burden shifts to the plaintiff which must then present its own evidence of medical necessity (see Prince, Richardson on Evidence §§ 3-104, 3-202 [Farrell 11th ed])." West Tremont Medical Diagnostic, P.C. v. Geico Ins. Co., 13 Misc.3d 131(A), 2006 N.Y. Slip Op. 51871(U) at 2 (App. Term 2d & 11th Dists. Sept. 29, 2006). Assuming the insurer establishes a lack of medical necessity based upon an IME doctor's testimony, it is ultimately the claimant who must prove, by a preponderance of the evidence, that the services were medically necessary. Amato v. State Farm Ins. Co., 40 Misc.3d 129(A), 2013 N.Y. Slip Op. 51113(U) (App. Term 2d, 11th & 13th Dists. July 3, 2013), rev'g, 30 Misc.3d 238 (Dist. Ct. Nassau Co. 2010) (district court held that IME cannot form basis for denying benefits unless post-IME records are reviewed); see also Dayan v. Allstate Ins. Co., 49 Misc.3d 151(A), 2015 N.Y. Slip Op. 51751(U) (App. Term 2d, 11th & 13th Dists. Nov. 30, 2015); Park Slope Medical and Surgical Supply, Inc. v. Travelers Ins. Co., 37 Misc.3d 19, 22 n. (App. Term 2d, 11th & 13th Dists. 2012).

I find that Jeffrey Nudelman's IME report contained a factual basis and a medical rationale. It made out a prima facie case of lack of medical necessity for acupuncture services past the cutoff date. Per the cited case law, the burden of proof shifted to Applicant to rebut the IME findings and affirmatively prove medical necessity for services past the cutoff date.

Applicant did not submit a follow-up exam report contemporaneous with the IME. Neither did it submit a formal rebuttal. As such, I find that Applicant failed to rebut the IME report. I find that further acupuncture services past the cutoff date are not medically necessary. I sustain the defense of IME cutoff asserted by Respondent. Said defense overcomes Applicant's prima facie case of entitlement to No-Fault compensation insofar as post-IME cutoff dates of service are concerned.

Accordingly, the within arbitration claim is granted to the extent of awarding Applicant $34.22 in health service benefits.

This arbitrator has not made a determination that benefits provided for under Article 51 (the No-Fault statute) of the Insurance Law are not payable based upon the assignor's lack of coverage and/or violation of a policy condition due to the actions or conduct of Assignor. As such and in accordance with the provisions of the

prescribed NYS Form NF-AOB (the assignment of benefits), Applicant health provider shall not pursue payment directly from Assignor for services which were the subject of this arbitration, notwithstanding any other agreement to the contrary.

Interest: Where a claim is timely denied, interest shall begin to accrue as of the date arbitration is requested by the claimant, i.e., the date the American Arbitration Association (AAA) receives the applicant's arbitration request, unless arbitration is commenced within 30 days after receipt of the denial, in which event interest shall begin to accrue as of the 30th day after proof of claim was received by the insurer. 11 NYCRR 65-4.5(s)(3), 65-3.9(c); Canarsie Medical Health, P.C. v. National Grange Mut. Ins. Co., 21 Misc.3d 791, 797 (Sup. Ct. New York Co. 2008) ("The regulation provides that where the insurer timely denies, then the applicant is to seek redress within 30 days, after which interest will accrue.") The plaintiff health care provider in Canarsie Medical Health, P.C. argued that where a timely issued denial is later found to have been improper, the interest should not be stayed merely because the provider did not seek arbitration within 30 days after having received the denial. The court rejected this argument, finding that the regulation concerning interest was properly promulgated; this includes the provision staying interest until arbitration is commenced where the claimant not does promptly take such action. Applicant presumptively received Respondent's denial covering the March 4, 2019 office visit a few days after April 22, 2019, when it was issued. Applicant's arbitration request was received by the AAA on Aug. 5, 2019, 2019, which was certainly more than 30 days later. Thus, interest must accrue from that date, not from the 30th day after proof of claim was received by Respondent. The end date for the calculation of the period of interest shall be the date of payment of the claim. In calculating interest, the date of accrual shall be excluded from the calculation. General Construction Law § 20 ("The day from which any specified period of time is reckoned shall be excluded in making the reckoning.") Where a motor vehicle accident occurs after Apr. 5, 2002, interest shall be calculated at the rate of two percent per month, simple, calculated on a pro rata basis using a 30-day month. 11 NYCRR 65-3.9(a); Gokey v. Blue Ridge Ins. Co., 22 Misc.3d 1129(A), 2009 N.Y. Slip Op. 50361(U) (Sup. Ct. Ulster Co., Henry F. Zwack, J., Jan. 21, 2009).

Attorney's Fee: After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d) (as existing on the filing date of this arbitration), subject to a maximum fee of $1,360.00.

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Please note that the Modria template for New York No-Fault arbitration awards contains an unalterable preprinted entry below for the State of New York, County of _____ as the location where the award was executed. This award was executed in the State of Florida, County of Palm Beach.

5. Optional imposition of administrative costs on Applicant.
   Applicable for arbitration requests filed on and after March 1, 2002.

   I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

6. **I find as follows with regard to the policy issues before me:**
   - ☐ The policy was not in force on the date of the accident
   - ☐ The applicant was excluded under policy conditions or exclusions
   - ☐ The applicant violated policy conditions, resulting in exclusion from coverage
   - ☐ The applicant was not an "eligible injured person"
   - ☐ The conditions for MVAIC eligibility were not met
   - ☐ The injured person was not a "qualified person" (under the MVAIC)
   - ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
   - ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the applicant is AWARDED the following:

A.

Medical		**From/To**	**Claim Amount**	**Status**
	Good Life Acupuncture, P.C.	**03/04/19 - 03/20/19**	**$560.41**	**Awarded: $34.22**
	Good Life Acupuncture, P.C.	**03/25/19 - 04/09/19**	**$532.20**	**Denied**
	Good Life Acupuncture, P.C.	**04/12/19 - 04/18/19**	**$316.54**	**Denied**
	Good Life Acupuncture, P.C.	**05/01/19 - 05/14/19**	**$274.14**	**Denied**
	Good Life Acupuncture, P.C.	**06/12/19 - 06/12/19**	**$206.60**	**Denied**
Total			**$1,889.89**	**Awarded: $34.22**

B. The insurer shall also compute and pay the applicant interest set forth below. 08/05/2019 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Respondent shall pay Applicant interest on the total first-party benefits awarded herein, computed from Aug. 5, 2019 to the date of payment of the award, but excluding Aug. 5, 2019 from being counted within the period of interest. The interest rate shall be two percent per month, simple (i.e., not compounded), on a pro rata basis using a 30-day month.

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

After calculating the sum total of the first-party benefits awarded in this arbitration plus interest thereon, Respondent shall pay Applicant an attorney's fee equal to 20 percent of that sum total, as provided for in 11 NYCRR 65-4.6(d) (as existing on the filing date of this arbitration), subject to a maximum fee of $1,360.00.

D. The respondent shall also pay the applicant forty dollars ($40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York
SS :
County of State of Florida, County of Palm Beach

I, Aaron Maslow, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

02/09/2021
(Dated)

Aaron Maslow

IMPORTANT NOTICE

This award is payable within 30 calendar days of the date of transmittal of award to parties.

This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.

ELECTRONIC SIGNATURE

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Electronically Signed

Your name: Aaron Maslow
Signed on: 02/09/2021